IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Date of decision: 14.12.2007

Second Appeal No. 1657 of 2001
Old No. 2098/1985

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Initial of Judge)

Date: 14.12.2007

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Second Appeal No. 1657 of 2001

1. Mohan Lal Bhasin (since decease)
S/o Late Sri Mool Raj Bhasin
R/o 39/40 Mannuganj
Dehradun.

1/1 Smt. Phula Devi
W/o Mohan Lal Bhasin

1/2 Anil Kumar
S/o Mohan Lal Bhasin

1/3 Rajesh Kumar
S/o Mohan Lal Bhasin
All R/o 39/40 Mannuganj, Dehradun.

……..Appellants

Versus

1. Smt. Kaushalya Devi
Widow of Late Sri Gokul Chandra
R/o 40/39 Mannuganj
Dehradun.

1/1 Gulshan Kumar Dora
S/o Roshan Lal Dora

1/2 Madan Lal Dora
S/o Roshan Lal Dora

1/3 Smt. Vidyawati
W/o Late Roshan Lal Dora
All R/o Mannuganj, Dehradun.

……Respondents

Shri K.N. Joshi, learned counsel for the appellant.
None present on behalf of respondent.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 100 of Code of Civil Procedure, 1908, is directed against the judgment and decree dated 30.10.1985, passed by learned Civil Judge, Dehradun, in civil appeal No. 59

of 1981, whereby judgment and decree dated 31.08.1981, passed by trial court (Munsif IIIrd, Dehradun) in original suit No. 320 of 1980, is set aside, and suit is dismissed.

2. Heard learned counsel for the appellant.

3. Brief facts of the case are that plaintiff/appellant instituted aforesaid suit No. 320 of 1980, against respondent-Kaushlya Devi in respect of property in suit No. 40/39 Mannu Ganj, Dehradun, seeking declaration that the plaintiff (present appellant) is a tenant in the aforesaid property. The house in suit originally belonged to one Abdul Samad and after he left the country in 1947, the property vested in the custodian. The property in suit thereafter was allotted on 30.01.1948, in the name of H.R. Bhasin, the eldest brother of plaintiff. In 1956-57, Duni Chand Pahwa, purchased the property in suit from the custodian, and thereafter in 1971, defendant/respondent- Kaushlya Devi, purchased the property from Shri Pahwa. The plaintiff's case is that he was tenant in the property in suit on rent at the rate of Rs. 3 and 2 annas since 1960, and as such, on the commencement of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, (herein after referred as U.P. Act No. 13 of 1972), became tenant, as he was living with the consent of the landlord, as a tenant in the house. Claiming the benefit of Section 14 of aforesaid Act, and apprehending that the defendant may get him evicted, the aforesaid suit was instituted.

4. The suit was contested by defendant (respondent) Kaushlya Devi, who denied the averments made in the plaint that the plaintiff was her tenant. However, she admitted having purchased the property in year 1971 from Duni Chand Pahwa. But she denied that plaintiff ever paid any rent to Duni Chand Pahwa or was his tenant. It is pleaded by the defendant that she had moved an application under Section 21 of U.P. Act 13 of 1972, in July 1980 for release of the house against Yogendra Pal Bhasin (defendant), another brother of the plaintiff (who was a admitted tenant), and to defeat the purpose of said application, the suit has been filed by the plaintiff. The trial court on the basis of the pleadings of the parties, framed following issues:-

1. *Whether the plaintiff is tenant of the property in suit and is he entitled to the benefit of U.P. Act 13 of 1972?*
2. *To what relief, if any, the plaintiff is entitled?*

5. The trial court, after recording the evidence and hearing the parties, held that the plaintiff has been successful in proving himself to be tenant and accordingly passed the decree declaring the plaintiff as tenant in the property in suit. Aggrieved by said judgment and order dated 31.08.1981, passed by the trial court (Munsif IIIrd, Dehradun), in suit No. 320 of 1980, the defendant (owner of the property in suit) preferred appeal which was numbered as civil appeal No. 59 of 1981, and transferred to the court of Civil

Judge, Dehradun. Said lower appellate court after hearing the parties found that what plaintiff has proved on record, is his possession in the property in suit and not his status as a tenant. Accordingly, lower appellate court vide its impugned judgment and order dated 30.10.1985, set aside the decree passed by the trial court and dismissed the suit filed by the plaintiff. Hence this second appeal was filed before Allahabad High Court on 02.12.1985, where it was admitted on following substantial question of law:-

Whether even on the facts found by the lower appellant court the appellant is not a tenant?

6. **Answer to substantial question of law:-**

Learned counsel for the appellant drew attention of this Court to documents filed before trial court namely monthly progress report of the plaintiff's son, paper No. 15A Ration card, paper No. 16A Radio licence, paper No. 17 A, 18 A and 19 A-receipts of deposit of electricity bills, paper No. 20 A, 21 A, 22 A- Birth certificate of children and also the receipts of deposit of rent under Section 30 of U.P. Act 13 of 1972. On its basis, it is argued that lower appellate court has erred in law by ignoring the strong documentary evidence in favour of the plaintiff. I have gone through the lower court record and also perused the impugned order. The lower appellate court has not ignored the aforesaid document, rather it has discussed and appreciated the evidence on record. The view taken by the lower appellate court is that all the documents on record, produced by the

plaintiff show that he was and is in occupation of the property in suit but that by itself does not give him a status of tenant of the defendant. Having gone through the evidence on record and after perusing the reasons, given by the lower appellate court, this Court has no reason to disagree with the finding of lower appellate court, for what is in dispute in the present case is the relationship of tenant and landlord. Tenant is a person by whom rent is payable to landlord. In other words there must be a relationship of lessee and lessor between the parties. It is not disputed that before the defendant purchased the property in suit in the year 1971, one Duni Chand Pahwa was the landlord/owner of the property in suit. It is also admitted between the parties that the plaintiff's brother Yogendra Pal Bhasin, was the tenant in the premises in suit. The question before this Court is how the plaintiff who is simply brother of the admitted tenant can claim himself to be the tenant of the defendant. There is specific plea of the plaintiff that he claims himself to be tenant on the ground that on the date of commencement of U.P. Act 13 of 1972, he was living in the house, as a tenant of the defendant and as such, his tenancy stood regularised under said provision.

7. It is pertinent to mention here the provision contained in section 14 of the aforesaid Act, which reads as under:-

"14. Regularisation or occupation of existing tenants- *Not withstanding anything contained in this*

Act or any other law for the time being in force, any licensee (within the meaning of Section 2-A) or a tenant in occupation of a building with the consent of the landlord immediately before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting. Rent and Eviction) (Amendment) Act, 1976, not being a person against whom any suit or proceeding for eviction is pending before any court or authority on the date of such commencement shall be deemed to be an authorized licensee or tenant of such building."

In the aforesaid provision, there is express condition provided that occupation of the person, who is claiming regularization under Section 14 must have consent of the landlord. Here in the present case, landlord has specifically denied having ever consented to treat the plaintiff as her tenant. Unless that condition is fulfilled, anyone who is occupying the house against the wishes of the landlord cannot claim himself to be tenant. As far as, the document Ration Card, Electricity Bill and other papers are concerned, these only show that the plaintiff was living in the house in suit as is the finding of both the courts below. Why the plaintiff was living in the house is also apparent from the evidence on record, as his eldest brother H.R. Bhasin was allotted the house and thereafter another brother Yogendra pal was admitted as tenant in the house. If the elder brother of the plaintiff had permitted him to stay with him that does not mean that the younger brother has become a tenant of the landlord unless the landlord accepts rent

from him. Plaintiff failed to show even a single receipt of rent issued either by defendant (Kaushalya Devi) or by her predecessor entitled Duni Chand Pahwa. The deposits made by the plaintiff under Section 30 of U.P. Act 13 of 1972, in the court of Munsif, Dehradun, of which proof has been given on the record, does not confer the status of the tenant to the plaintiff as his application to make deposit has been allowed without prejudice to the rights of the parties. And landlord had never accepted said rent from the plaintiff. In the circumstances, this Court does not find any error of law committed by lower appellate court.

8. Learned counsel for the appellant drew attention of this Court to the principle of law laid down in ***Chetar Sen Jain Vs. Additional District Judge III and others Allahabad Rent Cases 1992 (2) Pg. 362,*** and argued that since the plaintiff had not instituted the suit for eviction of the plaintiff, as such, the consent of the landlord should be presumed accepting his tenancy. The facts in the case referred are not similar to the facts of this case. In the present case, it was the plaintiff's brother, who was tenant and plaintiff's claim is merely based on the ground that he was continuing in occupation from the time of his brother but he failed to prove that he paid the rent to erstwhile landlord or the present landlord. It has come on the record in the present case that the defendant has filed an application for release of the house against Yogendra Pal Bhasin (brother of the plaintiff) who

was admitted tenant. It was not necessary for the defendant to file proceedings against the plaintiff separately who was living with his brother. The defendant's plea appears to be correct that to frustrate the proceedings moved by him under Section 21 of U.P. Act 13 of 1972, against the tenant (Yogendra Pal Bhasin), this suit has been instituted by his brother, who appears to be living with the tenant.

9. For the reasons, as discussed above, this Court finds no error of law, committed by the lower appellate court and as such, the substantial question of law is answered with the finding that on the basis of the evidence adduced by the plaintiff, he (plaintiff) cannot be said to be tenant under Section 14 of U.P. Act 13 of 1972.

10. The second appeal is dismissed. No order as to costs.

Dt. 14.12.2007 **(Prafulla C. Pant, J.)**
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